

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00209-MR**

JOSHON NANCE,)	
)	
Plaintiff,)	
)	
vs.)	
)	
FNU SIMMERER, et al.,)	<u>ORDER</u>
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on the Plaintiff's pro se Amended Complaint [Doc. 9] and Second Amended Complaint¹ [Doc. 10]. The Plaintiff is proceeding in forma pauperis. [Doc. 6].

The Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983 addressing a use of force incident that allegedly occurred at the Foothills Correctional Institution, where he is still incarcerated. [Doc.1]. On October 31, 2022, the Complaint passed initial review against Defendants Simmers² and Lockwood for the use of excessive force. [Doc. 8]. The remaining claims were dismissed without prejudice an the Plaintiff was granted 30 days in

¹ Titled "Complaint."

² Also identified as "Simmerer" in the Complaint. [Doc. 1 at 7].

which to file an Amended Complaint. [Id.]. The Plaintiff was specifically informed that “[a]ny Amended Complaint ... will supersede his prior filings,” and that “[p]iecemeal amendment will not be allowed.” [Id. at 6].

The Plaintiff’s present Amended Complaint and a Second Amended Complaint are both dated November 10, 2022, and they address the same excessive force incident that passed initial review, but they are not identical. [Docs. 9, 10]. The Plaintiff has ignored the Court’s instructions to file a “superseding” Amended Complaint and to refrain from piecemeal filing. Thus, the Amended Complaint and the Second Amended Complaint are dismissed.

The Plaintiff shall have 30 days in which to file a Third Amended Complaint that will supersede his prior filings. Any Third Amended Complaint must be on a § 1983 form, clearly identify the Defendants against whom he intends to proceed, and set forth the facts describing how each of the Defendants allegedly violated his rights. Should the Plaintiff fail to comply with this Order, the Court will proceed on the claims identified in the Order on initial review of the Complaint. [Doc. 8].

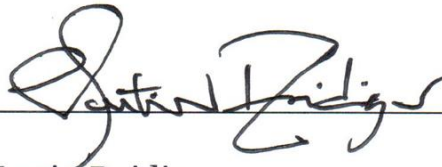
IT IS, THEREFORE, ORDERED that the Plaintiff may file a superseding Third Amended Complaint within **thirty (30) days** in accordance with this Order. If the Plaintiff fails to so amend in accordance

with this Order and within the time limits set by the Court, the Court will proceed on the claims identified in the Order on initial review of the original Complaint. [Docs. 1, 8].

The Clerk of Court is respectfully instructed to mail the Plaintiff a blank § 1983 prisoner complaint form and a copy of this Order.

IT IS SO ORDERED.

Signed: November 28, 2022



Martin Reidinger
Chief United States District Judge

